IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 60 of 1994

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

THAKORBHAI TALSIBHAI BRAHMBHATT

Versus

STATE OF GUJARAT AND ANOTHER

Appearance:

MR HM PARIKH for Petitioner

MR SP DAVE APP for Respondent No. 1

MR JA ADESHRA for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 03/05/2000

ORAL JUDGEMENT

Heard the learned advocates.

This Revision under section 397 CRPC arises of

the judgment and order dated 12th January, 1994, passed by the learned Judicial Magistrate, First Class, Borsad, below application Ex-1 in complaint being CR No. I-182/91 filed in Borsad Police Station. The petitioner before this court is the accused in the said complaint and the respondent no.2 is the complainant.

It appears that in the year 1985, the accused had given his well to the complainant on lease. It is the case of the complainant that after taking the well on rent, the complainant had installed an electric pump, motor, pump and the pipe line to draw water from the well. However, in the year 1991 the accused allegedly forcibly took away the said electric motor, pump, the pipe line, and the iron ladder from the possession of the petitioner. On 14th September, 1991, he, therefore, lodged a criminal complaint which was registered as CR No. I-182/91 in Borsad Police Station. On 20th September, 1991, the complainant made an application for possession of the Muddamal articles. The learned Magistrate, under his order dated 28th May, 1992, held that the complainant had failed to prove the ownership of the Muddamal articles and, therefore, ordered to hand over possession of the Muddamal articles to the accused from whom they were recovered. Feeling aggrieved, the complainant preferred Revision Application No. 67/92 in the Sessions Court at Nadiad. The said Revision Application was allowed by the Sessions Court and the matter was remanded to the trial court for recording further evidence as regards the ownership of the Muddamal articles. After remand, the said application was heard by the learned Magistrate, and the learned Magistrate held that that the complainant had proved his ownership of electric motor, pump and the pipe line, however, the iron ladder belonged to the accused. Under the impugned order dated 12th January, 1994, the learned Judge directed that the Muddamal articles i.e. electric motor, pump and the pipe line shall be handed over to the complainant on her giving a personal bond in the sum of Rs.22,000/- and furnishing surety for the like amount, and the iron ladder be handed over to the accused on his executing a bond in the sum of Rs.2000/- and on furnishing surety for the like amount. Feeling aggrieved, the accused has preferred the present Revision.

Mr. Parikh has submitted that the learned Magistrate had no authority or jurisdiction to make the impugned order in as much as no criminal proceedings were

pending before the learned Magistrate. Infact, after investigation, the police had filed 'C' summary, which was accepted by the learned Magistrate. The learned Magistrate had, therefore, no jurisdiction to make any order in respect of the Muddamal articles either under section 451 CRPC or under section 452 CPRC. The order, therefore, suffers from the vice of inherent lack of jurisdiction and requires to be quashed and set aside.

The present Revision requires to be rejected on the ground of maintainability alone. Rightly or wrongly, the learned Magistrate has purportedly invoked section 452 CRPC and has made the order in respect of disposal of the Muddamal property. Therefore, the impugned order essentially is made under section 452 CRPC. The said order, therefore, should be appealable before the lower appellate court under section 454 CRPC and no revision can lie before the High Court.

The present Revision is, therefore, dismissed on the ground of maintainability alone. It is clarified that merits of the impugned order are not examined. Rule is discharged.

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JOSHI